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December 11, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE Secretary

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, DC 20554

Re: CC Docket No. 96-128 (Ex Parte Filing)

Dear Ms. Dortch:

In light of the Commission's expressed desire to facilitate competition in the Inmate Calling Service ("ICS") market,[1] this *ex parte* letter is submitted jointly on behalf of PaeTec Communications, Inc. ("PaeTec") and Outside Connection, Inc. ("OC") in order (i) to bring to the Commission's attention one way in which competition can occur consistent with both existing communications regulatory policy as well as the policy of state prison authorities to protect prison security, and (ii) to request the Commisson's help. As discussed in more detail below, in providing end-to-end long distance collect call service to friends and family members of prison inmates, OC relies on the carrier that owns ICS infrastructure inside prisons to transport the local portion of each call, and it relies on PaeTec to transport each such call from the local rate center where the subject prison is located to the OC customer in a distant city. By providing end-to-end service in this manner (*i.e*, relying on the ICS infrastructure provider for local transport and PaeTec for long distance transport), OC is able to make available end-to-end long distance collect call service to friends and family members of inmates at a substantially lower price than the end-to-end prices charged by the carrier owning ICS infrastructure.

While there is no legitimate policy reason to preclude competition for the long-haul portion of an interstate inmate call after the call leaves the prison walls as discussed below, due to the powerful economic incentive of both ICS providers that own ICS infrastructure and prison officials to preserve their end-to-end monopoly, OC has encountered serious resistance from the New York Department of Correctional Services ("DOCS") and MCI WorldCom ("MCI"), the carrier selected by DOCS to provide ICS service in the New York state prisons where OC also provides service and thus the carrier

[1] *Order on Remand and Notice of Proposed Rulemaking in* CC *Docket No. 96-128, 17 FCC Rcd. 3248* at ¶ 76 (2002) ("We . . . seek comment on alternatives . . . that might result in lower rates for inmate calls while continuing to satisfy security concerns).

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that owns ICS infrastructure in New York prisons. Collect calls by inmates to OC's end user customers are being blocked, and MCI is harassing OC's customers. While DOCS and MCI have a legitimate interest in ensuring that OC's operations do not jeopardize prison security as the FCC has recognized: the manner in which OC provides service does not hinder prison security in any way as discussed below. We therefore ask the Commission to order a halt to the unjustified interference by MCI and DOCS with OC's business.

Below, we first contrast the manner in which carriers that own ICS infrastructure provide end-to-end collect call service with the manner in which OC provides such service using the same infrastructure. We then outline the concerns that have been raised against OC operations by MCI and DOCS, and we explain how OC has addressed those concerns.

DISCUSSION

I. Comparing the Manner in Which Carriers Owning ICS Infrastructure Provide ICS Service With the Manner in Which Service Is Provided By OC

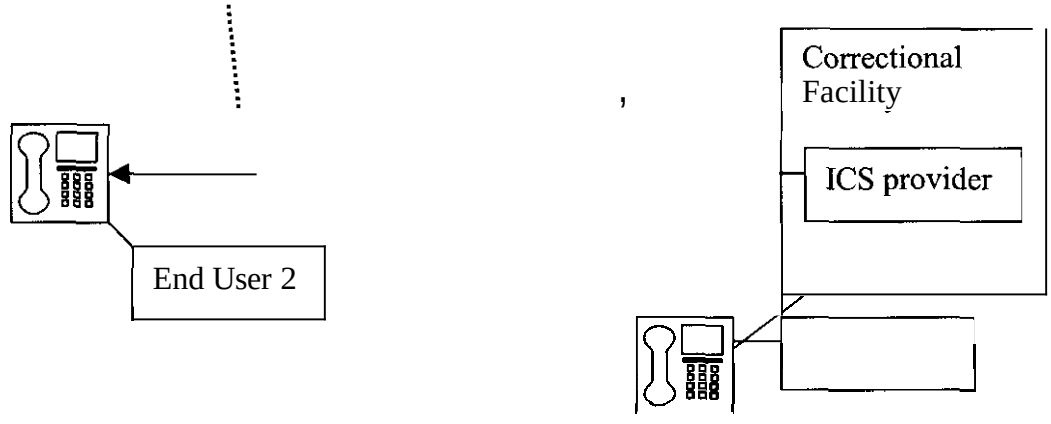
Before describing how OC provides service, it will be useful to explain how ICS is provided by the camer that is selected by a prison to deploy the ICS infrastructure over which all ICS is provided. At times, we will refer to this latter carrier as the "infrastructure owner."

Scenario 1: Typical Inmate Calls. In the typical scenario, the camer selected by a prison to provide ICS owns the infrastructure inside the prison over which service is provided and handles both local and long distance calls from the prison on an end-to-end basis. (See Figure 1 below.) The inmate places a collect call from a prison phone, and the end user accepts the call. Thus, End User 1, located within the local calling area of the prison as depicted in Figure 1, pays the ICS provider's local collect call rates. End User 2, located in another state as depicted in Figure 1, pays the ICS provider's interstate collect call toll rates. In both cases, the ICS provider bills each called party for all elements of the call. Because the cost of providing service in prisons is assumed to be substantially higher than the cost of providing service elsewhere, the price of both local and interstate collect calls from inmates is much higher than the price of comparable collect calls from other phones.

[2] *Id* at ¶ 72

Figure 1

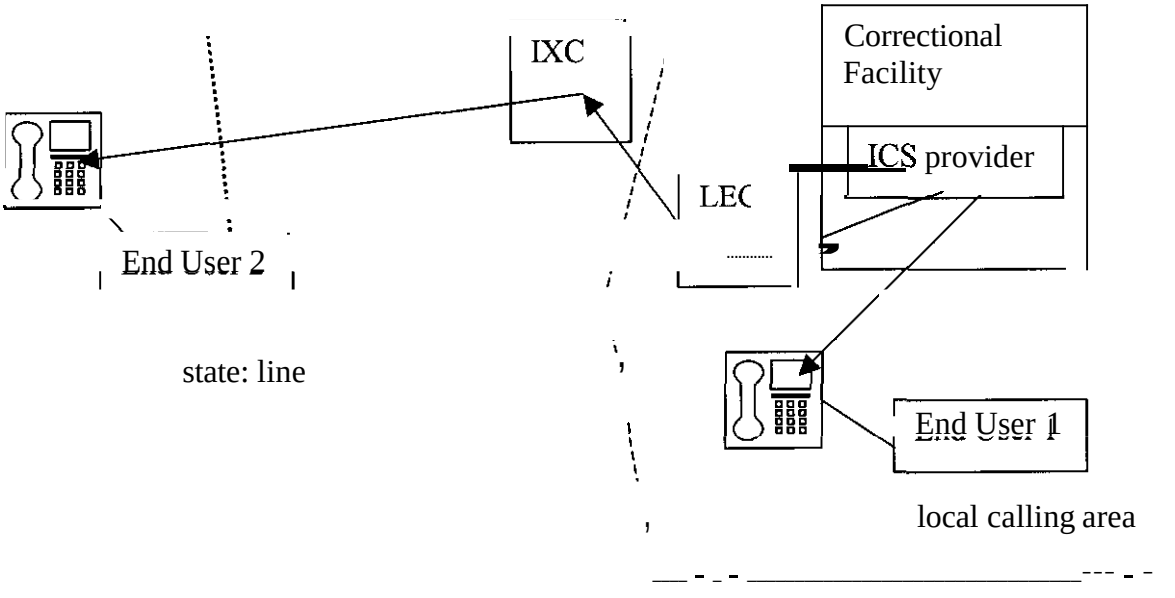
Typical inmate calls



Scenario 2a: Virtual Relocation Through FX Service. End User 2 above could, of course, avoid the ICS provider's high toll charges by relocating to a point within the local calling area of the prison. The ICS call then would be a local call, and End User 2 would pay the same rates as End User 1. While the price paid by the end user for local collect calls from the correctional facility still would be higher than the price of other local collect calls (since local calls from correctional facilities are substantially more expensive than local calls from other phones), the end user would pay significantly less for local collect prison calls than for long distance collect calls from the same institution. Rather than moving to the same community where the prison is located, a more practical approach for End User 2 might be to remain in his or her original location but, in effect, to move his or her phone service to the prison's local calling area by subscribing to interstate foreign exchange ("FX") service from an interexchange carrier ("IXC"). Under this scenario, End User 2 would be assigned a telephone number with exchange service in the local calling area of the prison, and his local line would be connected to a dedicated private line circuit (in effect, a very long loop) to his actual location in the other state. (See Figure 2 below). The inmate would place a collect call to End User 2's local number using the ICS provider's service. The FX service would enable End User 2 to answer the call at home, accept the charges, and speak with the inmate. The ICS provider would bill End User 2 for a local collect call at ICS rates, just like End User 1. End User 2 would pay the IXC for the FX service it uses to transport the local call to his or her location. End User 1 would be served and billed by the ICS provider, as in Scenario 1.

Figure 2

Virtual Relocation Through FX or RCF



Whether all of this is economical for End User 2 would depend on the ICs and FX rates involved, as well as the calling volume. It does not appear, though, that the ICS provider could justifiably object to this arrangement, refuse to complete calls to the local number, or seek to bill End User 2 at the ICS toll rates that otherwise would have applied.

Scenario 2b: Virtual Relocation Through Remote Call Forwarding. A substantially equivalent, but more economical, arrangement would be for End User 2 to use Remote Call Forwarding ("RCF") rather than FX service to relocate "virtually" to the local calling area of the prison. RCF is a common feature available from most LECs that allows a customer to have a local telephone number in a distant city without using (and paying for) a dedicated private line circuit. All calls received at the local number are forwarded automatically by the telephone company's central office equipment by dialing the "ring to" number of the terminating location.[3]

Figure 2 above illustrates this scenario. End User 2, in order to avoid the high toll rates charged by the ICS provider, would subscribe to local service from the LEC, along with RCF to the telephone number of End User 2's actual location in the other state. The inmate would place a collect call as before. The ICS provider would deliver the call to

[3] RCF is, in effect, "measured Foreign Exchange" service. ***Newton's*** *Telecom Dictionary*, 18" ed. At **621** (Feb. **2002).**

End User 2's local number, and the RCF would send it automatically, via the end user's chosen IXC, to the end user. End User 2 would answer the call, accept the charges from the ICS provider, pay the ICS provider's rate for the local collect call just like End User 1. In addition, End User 2 would pay the LEC for the local number and RCF and would pay the IXC for the long distance portion of the call, all at standard non-ICS rates.

If the FX arrangement is unobjectionable from a policy standpoint, the result should be no different with RCF since the carrier selected by the prison to provide ICS service would still handle 100 percent of inmate calls. The end user would merely use available technology and features to do virtually what he or she could clearly do actually, namely relocate to a point within the local calling area of the prison in order to enjoy local collect call, as opposed to toll collect call, rates. Prison policies that prohibit recipients of collect calls by prison inmates from forwarding those calls to other numbers (*i.e.*, the fear that the called party will redirect a call to a prohibited number) would not apply because a "ring to" number associated with RCF can be reprogrammed only by the telephone company that provides the RCF functionality, not by the called party.[4]

Scenario 2c: Promoting the RCF Approach on an Agent Basis. While the scenario above assumes that End User 2 would arrange service directly from the LEC and IXC, there also are companies, such as Private Lines, Inc.,[5] that promote these services to inmate families and assist them in ordering them, apparently in return for a share of the IXC revenues.[6] Under these arrangements, the end user remains the customer of record for all services and is billed separately by the ICS provider for the local collect call, by the LEC for the local number and RCF, and by the IXC for the long distance leg of the call. If the RCF solution is legitimate when pieced together by an end user acting alone, it obviously is no less legitimate when a third party is involved in helping inmate friends and family members avail themselves of the arrangement.

Scenario 3: Outside Connection's RCF-Based Service. Figure 3 below illustrates how OC operates. Technologically, this scenario is the same as in Figure 2, in which a local number, RCF, and an IXC are used as competitive substitutes for the long distance leg of the inmate call. In order to make things even easier and less expensive for the inmate family, however, OC purchases all of the components itself and then resells them as an end-to-end integrated service to its customers, who are friends and family members of prison inmates. OC has obtained certification as a carrier, filed tariffs in the relevant jurisdictions, and contracted with PaeTec, a facilities-based integrated communications provider, to obtain the local numbers, RCF, and long distance service necessary to provide its end-to-end toll collect call service from prison phones. OC obtains the local collect call service necessary to originate its long distance service from the ICS carrier selected by the prison to deploy ICS infrastructure and provide ICS in that

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[4] ***Id.***

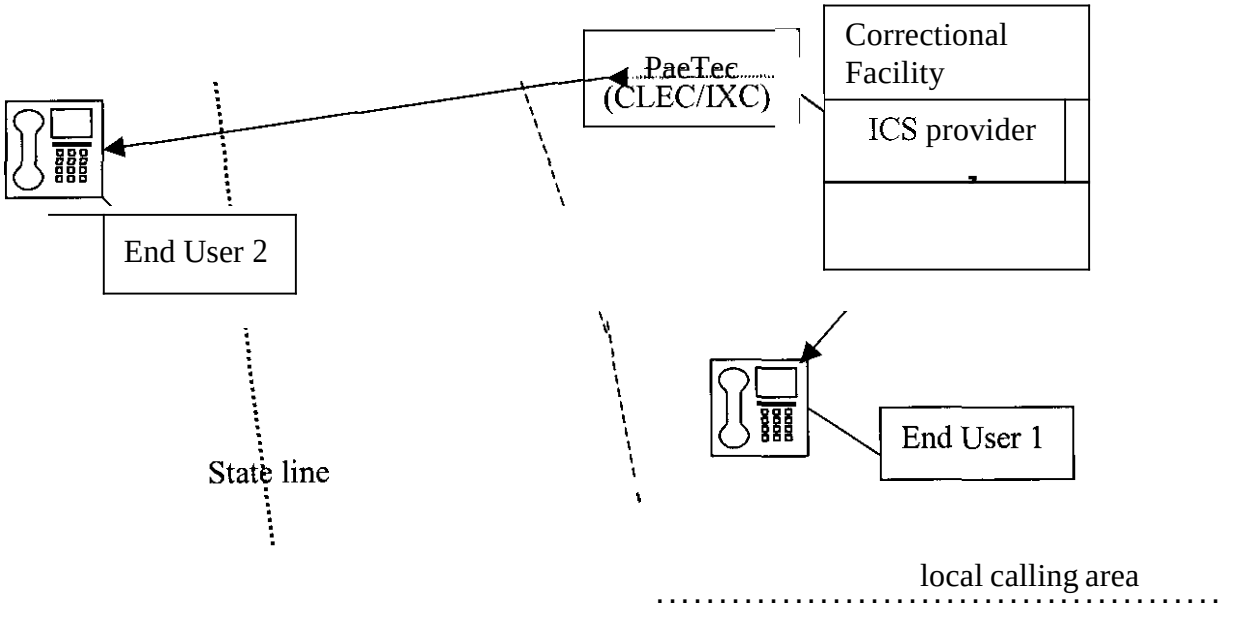
[5] **See http://www.privatelinesinc.com.**

[6] Private Lines is apparently a sales agent for WorldXChange Corp., an IXC. ***See*** http://www.worldxchange.com/agent/Default.asp?agid=225300.

prison. The inmate places a collect call to the local number assigned to End User 2 using the infrastructure of the prison's ICS provider. End User 2 answers at the remote location and accepts the charges. The prison's ICS provider bills OC for the local collect call. The end user only has to deal with a single carrier, OC, and receives a single bill from OC for all charges. OC's complete service to the end user includes the ICS infrastructure owner's local collect call component, the remote telephone number, RCF, and a long distance charge. The price that an OC customer pays for end-to-end collect call toll service, however, is significantly lower than the price the customer would pay if the carrier owning the ICS infrastructure had supplied the end-to-end service (rather than supplying only the local collect call component of the end-to-end service).

Figure 3

Outside Connection's Resale Solution



II. Concerns Raised By MCI and DOCS to Justify Interfering With the OC Service, and Manner in Which OC and PaeTec Have Sought to Eliminate Those Concerns

Two operational aspects of OC's service have attracted adverse attention from MCI and DOCS and deserve discussion here.

MCI first sought to justify blocking calls from inmates to OC's customers on grounds that it did not know who to bill for the local collect call functionality that MCI provides as an ICS provider in New York and that OC uses in providing its end-to-end

long distance collect call service. MCI's lack of billing information resulted from the fact that OC obtains the local phone numbers it uses in providing service to its customers from PaeTec and from the fact that MCI had not sought billing name and address ("BNA") data for the subject numbers from PaeTec. But as soon as PaeTec became aware that MCI was using its lack of **BNA** data as an excuse to block calls to OC customers, it offered to provide MCI with BNA data pursuant to standard industry procedures as set forth in Section **64.1201** of the Rules. Proceeding in this fashion would result in PaeTec identifying OC as the subscriber to MCI's local collect call service whenever a prison inmate calls a local number assigned by PaeTec to OC for use by OC in providing end-to-end long distance service to OC's end user customers, and MCI would bill OC directly for that service.[7] OC, in turn, would be fully responsible for paying these charges.

Both MCI and DOCS also have sought to justify the blocking of calls to OC's customers based on their claim that such blocking is necessary to maintain prison security. While DOCS has a legitimate interest in implementing policies that promote prison security, OC has made several proposals to ensure that its service does nothing to interfere with prison security.

Before describing OC's proposals to protect prison security, a brief review of the security concern and DOCS policies that have been put in place to accommodate that concern will be helpful. **A** correctional institution's security concern is both understandable and justified: helping prison authorities ensure that an inmate does not communicate by phone with anyone with whom there is a legitimate reason to prohibit communications (*e.g.*, a person scheduled to testify against the inmate, for example). In order to meet this objective, DOCS has adopted three policies. The first policy requires each inmate to provide prison authorities with a list of all phone numbers that he or she wishes to call; the inmate is permitted to place calls only to a number provided by the inmate to prison authorities, and prison authorities authorize MCI to program the ICS system to accept calls to a number on the inmate's list only after prison authorities have been given an opportunity to determine whether there are legitimate reasons to prohibit calls to that number. The second DOCS policy is embodied in Section 270.2 of the DOCS regulations, 7 NYCRR § 270.2. That section prohibits the recipient of any collect call from a New York State prison from forwarding that call to another phone number, and it authorizes DOCS to instruct MCI to program the ICS system to prohibit calls to any phone number where the recipient of a call has engaged in this prohibited conduct. The third DOCS policy allows DOCS to monitor any telephone call by an inmate at any time. This policy provides prison authorities with additional assurance that inmates do not engage in telephonic communications that there is a valid reason to prohibit.

In recognition of DOCS' legitimate interest in helping ensure that inmates do not use the OC service to engage in prohibited communications, OC has made clear that it will comply fully with all three DOCS policies. With regard to the first -- requiring each inmate to provide prison authorities with any phone number that he or she wishes to call

[7] OC also repeatedly offered independently to provide MCI with a conhnuously updated list of phone numbers to which it subscribes if MCI wants to obtain **this** information directly from OC.

so that DOCS may investigate the person to whom the number is assigned prior to permitting the inmate to call that number -- OC has informed DOCS that it will provide DOCS the name and address of the OC customer of each telephone number to which OC subscribes (as well as any other information that DOCS reasonably desires), and that it will update this information daily. Proceeding in this fashion gives DOCS an opportunity to investigate the person to whom each OC phone number is assigned in precisely the same way that it has an opportunity to investigate all other numbers on an inmate's calling list, and it gives DOCS the ability to conduct this investigation before those numbers are programmed into the MCI's ICS system and thus before the inmate providing prison authorities with those numbers can place a collect call to them. With regard to the second policy – prohibiting the recipient of an inmate call from forwarding that call to another number – nothing in the way OC operates will result in any greater risk of this prohibited conduct than exists with respect to calls transmitted end-to-end by MCI. Nor does OC compromise the DOCS policy that permits prison authorities to monitor any call at any time when an inmate places a call to an OC customer. DOCS authorities are free to monitor those calls in precisely the same way that they monitor calls transported end-to-end by MCI.[8]

Unfortunately, MCI and DOCS officials have been uncooperative. Rather than obtain BNA from PaeTec on the phone numbers to which OC subscribes in order to serve OC customers and then obtain information from OC about the end user to whom OC assigns each number, MCI and DOCS authorities instead have taken the position that MCI has an exclusive right to carry ICS traffic on an end-to-end basis. As a result, they block all calls to each telephone number that PaeTec assigns to OC for provision of OC's end-to-end service whenever they learn that the number belongs to OC. MCI also makes harassing phone calls to OC's customers and sends them bills for service they have not used and to which they do not subscribe. Because of this conduct, OC recently filed a

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[8] MCI also has made the patently frivolous claim that the FCC's "truth-in-billing" rules require that OC state on its monthly invoices to OC customers that MCI provides the OC customer with the local collect calling functionality that OC incorporates into its end-to-end toll call. In fact, the FCC's truth-in-billing requirements would obligate OC to identify MCI WorldCom of the provider of the local collect-call functionality & if the OC customers signed up for that functionality with MCI and then signed up with OC for long distance transmission. That is not the way OC provides service. Instead, OC incorporates the local collect calling functionality that it obtains from MCI into OC's own end-to-end toll collect calling service, a mode of operation that the FCC has declared perfectly acceptable under the agency's truth-in-billing requirements:

> We clarify that, when . . . a single [entity] bundles a number of services (some of which may be provided by various different carriers) as a single package offered by a single company, such offering may be listed on the . . . bill as a single offering rather than listed as separate charges by (different service) provider(s)" ***See Truth-In-Billing Format,*** 15 FCC Rcd. **6023** at ¶ 9 (2000).

civil lawsuit against MCI and DOCS for damages for interfering with OC's business. This lawsuit is pending.'

The conduct of DOCS and MCI is plainly unlawful under established communications policy. For example, MCI's refusal to permit OC to purchase the local collect call service that MCI provides in prisons violates Section 251(b)(1) of the Communications Act. That Section states that no local exchange carrier may "prohibit [or] impose unreasonable or discriminatory conditions or limitations on the resale of its telecommunications services." In its role of providing local collect call service from prisons, MCI plainly is a local exchange carrier, and its refusal to permit OC to purchase MCI's local collect call service so that OC may incorporate that service into its own end-to-end service violates that section of the Act.

The active participation of DOCS in efforts to prevent OC from providing collect call service in New York correctional facilities violates Section 253(a) of the Act as well. That statute states that "[no] state . . . or regulation, or other State legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." As discussed above, the actions of DOCS make it impossible for OC to provide service from New York correctional facilities.

MCI's harassment of OC customers also violates the FCC's "cramming" policy. Cramming is "the practice of placing unauthorized, misleading, or deceptive charges . . . on a telephone bill in order to mislead consumers into paying for services they did not authorize or receive."" MCI's harassment of OC customers includes not only making threatening telephone calls but also sending bills to OC customers for MCI's end-to-end ICS service even though OC customers have never accepted calls made using MCI's service.

The actions of DOCS and MCI also violate the Commission's strong policy to eliminate barriers to competition in telecommunications markets whenever reasonably possible. The ICS market is one of the last telecommunications markets in which no competition has existed. OC has found a way to bring competition to that market consistent with the legitimate security concerns of correctional facilities, but the actions of MCI and DOCS have frustrated OC's ability to do so.

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[9] ***See In re WorldCom, Inc., et al., Debtors, Case No. 02/13533 (AJG) Chapter 11, Outside Connection. Inc., v. MCI WorldCom and New York State Department of Correctional Services,*** Adversary Proceeding No. 02/8092A (AJG), (U.S. Bankruptcy Ct, S.D.N.Y.). Unfortunately, the court recently denied OC's motion to enjoin the defendants from blocking calls to OC customers and from harassing OC customers pending the outcome of the litigation.

[10] "FCC Continues National Fraud Awareness Week Activities; Day Three: Cramming," 2002 FCC LEXIS 3882 (Aug. 7,2002).

CONCLUSION

PaeTec and OC challenge neither the Commission's finding that legitimate security considerations preclude facilities-based ICS competition nor its ruling exempting ICS from the dial-around obligations of TOCSIA. Instead, we merely ask the Commission to order MCI and DOCS to quit blocking calls by prison inmates to OC customers under the facts set forth above.

Respectfully submitted,

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